IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

THURSDAY, THE 28TH JUNE 2007 / 7TH ASHADHA 1929

Crl.Rev.Pet.No. 2351 of 2007()

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REVN. PETITIONER: APPELLANTS/ACCUSED

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1. M/S. JOHNSONS GARMENTS, REPRESENTED BY MANAGING PARTNER, E.J.MAMMEN, P.B.NO.3, K.K.ROAD, KOTTAYAM.

2. E.J.MAMMEN, AGED 43, MANAGING PARTNER, JOHNSONS GARMENTS, EDAYATHARA HOUSE, PARTHAS LANE, KOTTAYAM.

BY ADV. SRI.KOSHY GEORGE

RESPONDENTS: RESPONDENTS/COMPLAINANT/STATE

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1. V.STAR CREATIONS, L.F.C.ROAD, KALOOR, KOCHI-17, REPRESENTED BY ITS CONSTITUTED ATTORNEY, BIJU JOSEPH.

2. STATE OF KERALA, REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA.

BY ADV. SRI. CHACKO GEORGE FOR R1

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 28/06/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

**V.RAMKUMAR, J.**

**.....**

**Crl.R.P. No. 2351 OF 2007**

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**Dated: 28.6.2007**

**O R D E R**

In this Revision filed under Section 397 read with Sec. 401 Cr.P.C. the petitioners who were the accused in C.C. No.1754/01 on the file of the J.F.C.M.-II, Kochi challenge the conviction entered and the sentence passed against them for an offence punishable under Sec. 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'the Act').

2. I heard the learned counsel for the Revision Petitioners and the learned counsel for the first respondent/complainant.

3. The learned counsel appearing for the Revision Petitioners re-iterated the contentions in support of the Revision. The courts below have concurrently held that the cheque in question was drawn by the appellants in favour of the complainant on the drawee bank, that the cheque was validly presented to the bank, that it was dishonoured for reasons which fall under Section 138 of the Act, that the complainant made a demand for payment by a notice in time in accordance with clause (b) of the proviso to Section 138 of the Act and that the Revision Petitioners/accused failed to make the payment within 15 days of receipt of the statutory notice. Both the courts have considered and rejected the defence set up by the revision petitioners while entering the above finding. The said finding has been recorded

on an appreciation of the oral and documentary evidence. I do not find any error, illegality or impropriety in the finding so recorded concurrently by the courts below. The conviction was thus rightly entered against the petitioners.

4. What now survives for consideration is the question as to whether a proper sentence has been imposed on the Revision Petitioners. Having regard to the facts and circumstances of the case, I am, however, inclined to modify the sentence imposed on the revision petitioners. Accordingly, if the revision petitioners pay to the first respondent complainant by way of compensation under Sec. 357 (3) Cr.P.C. a sum of Rs.1,11,564/- (Rupees one lakh eleven thousand five hundred and sixty four only) within six months from today, then they need to undergo only imprisonment till the rising of the court. If the revision petitioners commit default in making the payment as aforesaid, the sentence, imposed on them by the trial court shall revive. Amount, if any, paid by the revision petitioners pursuant to the orders, passed by the lower appellate court shall be refunded to the petitioners.

This Revision is disposed of confirming the conviction but modifying the sentence as above.

V. RAMKUMAR, JUDGE.

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